

10 October 2018

**Non-Confidential**

Mr Rhys Piper  
Director  
Investigations 1  
Anti-Dumping Commission  
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Dear Mr Piper

**Continuation Inquiry Prepared or Preserved Tomatoes Case 488**

Further to the report by the Anti-Dumping Review Panel (ADRP)<sup>1</sup> and the Reinvestigation referred to in the ADRP's report SPC wishes to draw to the Anti-Dumping Commission's attention several matters of concern and to also clarify the interpretation of SPC's previous submissions. SPC's analysis of the regulations may be relevant in any assessment of whether tomatoes are supplied at a competitive market cost during the continuation inquiry.

SPC notes the ADRP's comments about the Commissioner having regard to submissions.<sup>2</sup> SPC has not commented on all the matters covered in the reports but should the ADC require, SPC would be willing to discuss any matters considered relevant.

**Clarification of matters previously considered.**

In the ADRP's conference summary of 5 September 2017 (published 11 October 2017) the ADC is reported as stating:

*The ADC Representative stated that it was only relevant if SPCA's claim of a specific "coupled" tomato payment was correct, the ADC had accepted the EC's evidence that the payment amount was based on the land holding, not a product.*

SPC had not claimed that the historical land-based tomato entitlement was explicitly "coupled" but SPC demonstrated that the land on which tomatoes had been grown received the historical payment arising from the growing of tomatoes for processing.<sup>3</sup>

The ADC's reinvestigation report commented on the ADC's preference to accept the EC's evidence on the operation of the CAP:

*In the Commission's view, the verified information on which the Commission relied in REP 360 is the more reliable evidence of payments actually received. To accept the amount contended for*

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<sup>1</sup> ADRP Report No. 56 – Certain Prepared or Preserved Tomatoes Exported from Italy by AR Industrie Alimentari S.p.A and by all Exporters other than by Feger di Gerardo Ferraioli S.p.A and La Doria S.p.A

<sup>2</sup> ADRP at [101]. the relevant section for continuation is s269ZHE(2)

<sup>3</sup> Letter to ADC 13 November 2017 4<sup>th</sup> bullet point. Attached.

*by SPCA as the amount of the CAP payment actually received in respect of a kilogram of raw tomatoes is to take the most charitable reading possible of the relevant Regulations and SPCA's interpretation of them. As has been noted previously, the EC is vehement in its rejection of SPCA's interpretation. The Commission considers the evidence of the EC in respect of the operation of the CAP to be more persuasive than the submissions put forward by SPCA.<sup>4</sup>*

Apart from general comments expected from a self-interested party, the EC has never pointed out specific errors in SPC 's interpretation of the regulations. Therefore, SPC is surprised that the EC's evidence is more "persuasive".

The ADC has incorrectly assumed that large tomato farms would be able to negotiate better prices for tomatoes grown for processing with tomato processors.

*The Commission notes that tomato prices are negotiated by the associations on behalf of growers (and that a more statistically significant correlation between CAP payments and prices occurs at that level). Whilst this suggests that associations may be aware of the value of CAP payments received by their growers, the Commission's analysis does not account for the impact of aggregating and averaging across farmers (which would increase the impact of quality differences or other factors that are not included in the regression equation, both of which are plausible reasons for this result). Further, this result does not make economic sense - as the size of the seller increases (from farmer to cooperative to association), it would be expected, based on economic theory, that the sellers' bargaining power compared to the purchaser (the tomato processor) would increase and the pass-through of the subsidy would be less, rather than more. This suggests that the impact of another, unidentified variable is causing the impact of CAP payments on raw tomato prices at the association level to be overstated. Accordingly, the Commission considers that the more reliable analysis is undertaken at the farmer level.*

Large tomato growers receive the same negotiated price for processing tomatoes as smaller growers. Those large farms do not have increased bargaining power. The associations negotiate a price, and this negotiated price implicitly takes into account the historical entitlement based on growing tomatoes. The historical tomato entitlements are concentrated on large farms. As pointed out in SPC's submission during the reinvestigation<sup>5</sup> a coupled payment, to be effective, must be made in the knowledge of the historical land-based tomato entitlement. That is the Italian government in deciding to introduce a coupled payment in 2015 knew that tomato farmers needed a "top up" to be viable. The coupled payment is finalised in the year after processing suggesting that there is a strong connection between what tomato farmers know is their historic entitlement and the "top up".<sup>6</sup>

The ADC mistakenly ignores the base years and believes that the EC's comments are more "persuasive"

If it is accepted that there are base years, then SPC's analysis of the regulations "embedding" historical payments becomes stronger.

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<sup>4</sup>Reinvestigation report page 14

<sup>5</sup> Letter to ADC, 13 November 2017

<sup>6</sup> For example, the coupled payment per hectare for the 2017 processing season (€173.74, originally €160.00 in 2015) was finalised in June 2018

*The Commission notes that the EC has emphatically rejected any suggestion that the base years operate in the way contended for by SPCA. The detailed evidence available to the Commission (and referred to above) is, in the Commission's view, more persuasive than the evidence presented by SPCA. Having relied on the verified value of CAP payments actually received, the Commission does not consider it necessary to re-examine the question of which year is the "base year".*

In an annex to an exporter's questionnaire the base years have been confirmed and supported SPC's interpretation that the original base years<sup>7</sup> ensured that historic payments received on land growing tomatoes continues.<sup>8</sup>

If any of the above requires clarification, or you would like to discuss further, please contact me.

Yours sincerely



Reg Weine  
Managing Director

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<sup>7</sup> 2004-2006 were the original base years for the SPS. The value base year for the BPS was 2014.

<sup>8</sup> REP 360 #013 [29-31] It has been pointed out that large tomato growers would continue to grow tomatoes and the provision of entitlements being paid if no tomatoes were grown incentivised smaller less efficient farmers from the supply chain.